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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. LAURA ANN ARTHUR, Defendant and Appellant.	B159192 (Los Angeles County Super. Ct. Nos. LA037496, LA039131)

APPEAL from a judgment of the Superior Court of Los Angeles County. John Fisher, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Jaime L. Fuster and Kim Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted appellant Laura Ann Arthur of forgery (Pen. Code, § 470, subd. (d))[1] (count 1); identity theft (§ 530.5, subd. (a)) (count 2); theft (§ 484e, subd. (d)) (count 5); use of a counterfeit seal (§ 472) (count 6); and forgery consisting of making, passing, or possessing a fictitious check (§ 476) (count 7).

The trial court sentenced appellant to the aggravated term of three years on count 1, to eight months on count 2, and to eight months on count 5. The court sentenced appellant to a concurrent term of two years on count 6 and stayed sentencing on count 7 pursuant to section 654. Appellant's total sentence was four years four months.

On appeal, appellant contends that her conviction on counts 5 through 7 must be reversed because the trial court erred in denying her motion to suppress evidence.

FACTS

I. Prosecution Evidence

A. Counts 1, 2, and 3

On March 13, 2000, appellant presented a check for payment at a Wells Fargo bank in Van Nuys. The check was written for $882.12 to Cynthia Antillon, and the payor was Seminole Garden Apartments. The teller asked appellant for identification, and appellant produced a driver's license confirming her identity. The teller asked appellant for her thumb print on the check, since Cynthia Antillon did not have a bank account at Wells Fargo. Appellant complied and received the amount of the check in cash.

At appellant's trial, Mark Finfer testified that he was the signatory on all checks issued by Seminole Garden Apartments. He never gave appellant a check or gave appellant permission to sign his name. He did not know who Cynthia Antillon was and had never written a check to her. The signature on the check was not his. The number on the check was not in sequence with the valid checks he used, and the check

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[1] All further references to statutes are to the Penal Code unless otherwise stated.

was a different color than the ones he used. Finfer said that the Seminole Garden Apartments had closed that particular account at Wells Fargo prior to March 13, 2000, because fraudulent checks had been printed for that account.

A forensic fingerprint specialist from the Los Angeles Police Department testified that she had compared the fingerprint on the face of the check from Seminole Garden Apartments to appellant's fingerprint. The specialist was of the opinion that the fingerprints were the same.

On March 6, 2001, in response to a call, Los Angeles Police Officer John Cuenca and his partner, Officer Smith, went to a house where appellant resided. Cuenca found appellant seated at a desk in the living room. Cuenca saw on the floor a black portfolio and a box located approximately three feet from appellant. Cuenca and Smith searched the box and portfolio and found several items.

One of the items Cuenca found was a rental agreement for a self-storage unit in the name of Cynthia Antillon. Cynthia Antillon testified at appellant's trial that she had not rented a storage unit, and she did not give appellant permission to rent the unit in her name. Antillon said she did not cash the check at Wells Fargo Bank. The address on the check was not hers, and she had never seen the check. Antillon did not give appellant her driver's license or name.

During the same search of appellant's residence, Officers Cuenca and Smith found myriad documents containing information about persons other than appellant. Cuenca found "dozens" of receipts from a Calico Corners Fabric store that contained names, addresses, telephone numbers, and purchase information pertaining to various individuals. There were various documents from the Department of Motor Vehicles (DMV), such as temporary driver's licenses in the names of Adeline Bartek and Roudolf Kirakosyan and a receipt for renewal of identification in appellant's name. There were two stacks of canceled checks issued by the San Vicente Escrow Company. There was a statement from Associated Reproduction Services containing invoice numbers, names, and corresponding social security numbers. Cuenca found a document from the "U.S. Department of Justice," an Arizona driver's license, a copy

of a check from Pan American Life, and a United States passport bearing names other than appellant's. There was an application for a credit card and a Blockbuster membership card in the name of a Davis Chang, and a phone card in the name of Shaniqua Payne. Cuenca also found documents bearing appellant's name, such as a doctor bill, a document from the "Reno Justice Court," an agreement between appellant and an attorney, a notice from a collection company, a letter and documents from the Social Security Administration, a cellular telephone bill, and two withdrawal receipts from Bank of America. There was a document labeled "account analysis report" that contained records of credit card transactions and credit card numbers. One of the credit card numbers belonged to a Margaret Hall, who testified that she had never met appellant nor given her the credit card number. There were employment documents in the name of Gilbert Gutierrez and blank paper for making checks.

B. Counts 4, 6, and 7

On October 22, 2001, Officer John Smith and Officer Kevin Turner[2] of the Los Angeles police went to a multi-story residence located at 3955 Fredonia Drive in Studio City where appellant rented the bottom floor.[3] When appellant opened her door, she tried to prevent the officers from entering by closing the door. The officers pushed on the door and gained entry. Appellant was standing approximately five feet from a bedroom door. Turner immediately moved to the bedroom and entered. Turner saw Elmer Barnes inside the room. Barnes was standing in the bedroom in a spot approximately two feet from the bathroom. Upon entering the bedroom, Turner saw in plain view a "DMV laminate." He also saw a credit card in the name of P. S. Kunisawa, and a credit card in the name of Robert Buckingham. These items were on the top of a desk that had been made from boards placed between two nightstands, and

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[2] Only Officer Turner testified at trial regarding counts 4, 6, and 7. Only Officer Smith testified at appellant's suppression hearing regarding the same counts.

[3] During the suppression hearing, Officer Smith testified that he had gone to the residence to execute warrants for the arrest of appellant and Elmer Lee Barnes.

which stretched across one entire side of the room. Turner testified that the DMV laminate was used to create holographic images for the purpose of making false driver's licenses. In the bathroom the officers found a Visa check card bearing the name "Meron" in plain view on a shelf. The officers observed several syringes, one of which was loaded with methamphetamine, and several baggies containing an off-white residue resembling methamphetamine. On the bed, the officers found a "medical tie off" -- a piece of rubber that is tied around an arm to make the veins stick out. On a dresser, the officers found a letter addressed to appellant at 5519 Laurel Canyon Boulevard, a letter addressed to a Juliana Alexander at the same address, and a letter referring to an insurance policy in the name of someone other than appellant. There was only female clothing in the room.

Finally, the officers found several $20 bills that Officer Turner immediately recognized as counterfeit. They were in a makeup purse. He noticed that the texture of the bills was different from real currency and that the color of the bills was of poor quality. There was yellowing in some portions, and the green portions were not the same as the green of real currency. In addition, all the bills bore the same serial number.

At appellant's trial, Kunisawa and Buckingham testified that their credit cards had been reported as lost and they had not given appellant permission to use the cards. Appellant's landlord testified that Juliana Alexander had rented the room with appellant, and only Alexander and appellant had keys to the room. Officer Turner testified that he had arrested Juliana Alexander one week prior to the search at Fredonia Drive.

II. Defense Evidence

Appellant presented no defense evidence.

DISCUSSION

I. Appellant's Arguments

Appellant argues that the trial court prejudicially erred in denying appellant's suppression motion regarding the evidence obtained in the October 22, 2001, search.

This evidence formed the basis of counts 5 through 7. Appellant argues that there was no merit to the prosecution's attempt to justify the search as a protective sweep because police had no information -- other than a suspicion -- that any danger existed in appellant's residence. Appellant also contends that the prosecution's claim that the seized items were in plain view was without merit.

II. Proceedings Below

At the hearing on appellant's suppression motion, Officer Smith testified that he had arrest warrants for both appellant and Elmer Barnes when he went to appellant's residence on October 22, 2001. Smith and Officer Turner saw a woman, Jennifer Baxter, exit appellant's residence, and they stopped her and spoke with her. Baxter confirmed that appellant and a male guest were at home and led them to appellant's door. Baxter's description of the male friend led the officers to believe it was Barnes. Also, the officers had spoken with the driver of a car parked outside the location who said he had dropped off his friend, Craig. Smith knew that "Craig" was a name used by Barnes. Smith therefore believed Barnes was inside.

Baxter knocked on appellant's door as Officers Smith and Turner stood out of view of anyone who came to the doorway. When appellant opened the door, Baxter rapidly entered the residence, and Smith and Turner followed right behind her. According to the plan the two officers had formulated, Smith took appellant into custody right inside the doorway. As Smith was handcuffing appellant, Officer Turner proceeded into a hallway and then into an open doorway two or three feet from where the hallway began. Smith and Turner knew the room was a bedroom. The officers also knew that the bedroom was appellant's because Officer Turner had had contact with appellant in mid-September during a forgery investigation. Smith testified that their purpose in proceeding further into the residence was to take Barnes into custody, but they were also concerned with making a protective sweep of the area.

Turner entered the bedroom and found Barnes standing in the room. Turner called out to Smith, who, with appellant in tow, looked into the room and identified

Barnes. Barnes was arrested. Officer Turner was out of Officer Smith's sight for approximately 30 seconds to a minute.

Smith testified that, during the arrests and the protective sweep, he saw items that were seized and subsequently placed into evidence. The bedroom measured approximately 10 feet by 10 feet or 12 feet by 12 feet. It was unkempt and in disarray. It contained a single bed, a desk with a computer, shelving, and closet space. All the items seized were either in plain view or within easy reach of Barnes. The room was arranged in such a way that one could stand in any part of the room and retrieve any of the items, and most of them were in plain view.

On a desktop next to a computer work station, immediately to Barnes's left and within his reach, Turner seized, in Smith's presence, two credit cards in names other than those of appellant and Barnes. Smith said the cards were in plain view, on top of the desk and facing upwards. Barnes was standing right next to the desk where the cards were recovered. In the same area where the cards were, Smith saw a laminate bearing the initials of the DMV and the state seal of California. The laminate was in plain view on top of the desk.

Smith recovered a syringe from a nightstand directly in front of Barnes, within approximately eight feet of him. Immediately to the left of the syringe, Smith saw a black and white makeup purse lying on its side with what appeared to be counterfeit currency of a poor quality protruding from the open zipper of the purse. A syringe was recovered from a makeup bag which was at Barnes's feet, underneath the desk.

Smith admitted he had no information that there were any other suspects in the residence that might have been armed or dangerous. Smith believed a protective sweep was required because of his knowledge of the location. He had been inside the house on previous occasions. The house is a location for narcotics, and narcotics is a dangerous business. There were "multiple people" inside the location besides appellant and Barnes. Because of the danger in the location, the officers had summoned an additional unit and a supervisor to the scene.

At the conclusion of Smith's testimony, appellant argued that the officers' search was exploratory. She argued that the items seized were not within her arm's reach, and the officers' claim that they were looking for Barnes was a pretext to search her bedroom. There were no particular facts to support a reasonable belief that someone else was present who was dangerous, and therefore the protective sweep exception did not apply. Also, a protective sweep would have required a broader search. Appellant argued that Officer Turner could have moved Barnes around to bring him closer to the desk before Smith entered the room. Also, the two women's makeup purses could not have belonged to Barnes.

The prosecutor argued that the police had a right to be in the bedroom because Barnes was the subject of a felony warrant. The room was small and the seized items were in plain view and within the area of Barnes's immediate control.

The trial court denied the motion to suppress without comment.

III. Relevant Authority

The Fourth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment, guarantees the right to be free of unreasonable searches and seizures. (U.S. Const., 4th Amend.; *People v. Camacho* (2000) 23 Cal.4th 824, 829-830.) Our review of issues related to the suppression of evidence obtained by police searches and seizures is governed by federal constitutional standards. (*People v. Camacho*, *supra*, at p. 830; *People v. Bradford* (1997) 15 Cal.4th 1229, 1291.) In reviewing the trial court's denial of a suppression motion, we defer to the trial court's factual findings if supported by substantial evidence. (*People v. Camacho*, *supra*, at p. 830.) We exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. (*Ibid.*; *People v. Russell* (2000) 81 Cal.App.4th 96, 102.)

A warrantless search violates the Fourth Amendment unless the search falls within a recognized exception to the warrant requirement. (*People v. Woods* (1999) 21 Cal.4th 668, 674.) One such exception is a protective sweep, which is "a quick and limited search of premises, incident to an arrest and conducted to protect the safety of

police officers or others." (*Maryland v. Buie* (1990) 494 U.S. 325, 327.) A protective sweep must be confined to a cursory visual inspection of those places in which a person might hide. (*Id*. at p. 327.) The essence of the Fourth Amendment standard is reasonableness, and the reasonableness of the officers' conduct depends on the facts known to the officers at the moment of the search. (*People v. Camacho*, *supra*, 23 Cal.4th at p. 830; *People v. Block* (1971) 6 Cal.3d 239, 244.)

To justify a seizure of an item allegedly within plain view, the officers must lawfully be in the position from which they view the item; the incriminating character of the item as contraband or evidence of a crime must be immediately apparent; and the officers must have a lawful right of access to the object. (*Horton v. California* (1990) 496 U.S. 128, 136-137; *People v. Kraft* (2000) 23 Cal.4th 978, 1041; *People v. Bradford*, *supra*, 15 Cal.4th at p. 1295.) The incriminating nature of the item is "immediately apparent" when the police have probable cause to believe it is contraband or evidence of a crime. Officers need not know to a near certainty that the item is evidence of a crime. (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 375; *Arizona v. Hicks* (1987) 480 U.S. 321, 326; *People v. Kraft*, *supra*, 23 Cal.4th at p. 1043.) "[P]robable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer would 'warrant a man of reasonable caution in the belief,' [citation], that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A 'practical, nontechnical' probability that incriminating evidence is involved is all that is required. [Citation.]" (*Texas v. Brown* (1983) 460 U.S. 730, 742.)

IV. Evidence Properly Admitted

After examining the record, which reveals the officers' movements from the time they entered appellant's residence, we conclude the trial court properly denied the suppression motion.

The United States Supreme Court held in *Maryland v. Buie*, *supra*, 494 U.S. 325, that "as an incident to the arrest the officers could, as a precautionary matter and

without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched." (*Id*. at p. 334.) Therefore, the officers' entry into the bedroom after appellant was arrested, and then into the adjoining bathroom, was justified as a search incident to the arrests. It follows that the seizure of the items in the bedroom and bathroom was justified because the items closest to Barnes were seized as part of a search incident to a lawful arrest, in addition to being in plain view. The remainder of the items were lawfully seized because they were simply in plain view.

A search incident to a lawful arrest does not require a warrant when there is a danger of evidence being destroyed. (*People v. Bracamonte* (1975) 15 Cal.3d 394, 403-404.) "'Such searches may be made whether or not there is probable cause to believe the arrestee may have a weapon or is about to destroy evidence. [Citation.] "The potential dangers lurking in all custodial arrests make warrantless searches of items within the 'immediate control' area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved. . . ." [Citation.]'" (*In re Humberto O.* (2000) 80 Cal.App.4th 237, 243, quoting *People v. Ingham* (1992) 5 Cal.App.4th 326, 330-331.)

Officer Turner, who arrested Barnes, found the two credit cards on top of the desk within Barnes's reach. Officer Turner had been involved in the investigation of appellant's prior forgery case and was therefore aware of the significance of the two credit cards in names of people who were not appellant or Barnes.[4] In *Chimel v. California* (1969) 395 U.S. 752, the United States Supreme Court stated that "it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into

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[4] The record indicates that Officer Smith was also involved in investigating appellant's prior forgery case and was the same Officer Smith that accompanied Officer Cuenca in a search of appellant's residence.

which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule." (*Id.* at p. 763.)

With respect to the other items, the trial court clearly determined at the hearing on the suppression motion that Officer Smith's account of the items' locations was credible. We accept the trial court's credibility determinations. From Officer Smith's testimony we glean that all of the items were in plain view and were recognizably items of evidence, given appellant's history. Because of the dual arrest warrants, and the officers' probable cause to believe Barnes was inside, the officers were lawfully in the position from which they could view the items. Given Officer Turner's prior investigation of appellant's activities, the incriminating character of the items as evidence of a crime was immediately apparent. With respect to the drug-related items, their identification as contraband was obvious. Since the officers had only proceeded into the adjoining bedroom and bathroom, they had a lawful right of access to the objects. (*Horton v. California*, *supra*, 496 U.S. at pp. 136-137; *People v. Kraft*, *supra*, 23 Cal.4th at p. 1041; *People v. Bradford*, *supra*, 15 Cal.4th at p. 1295.) Moreover, the Fourth Amendment does not prohibit such seizure of evidence in plain view even if the discovery by the officers was not "inadvertent." (*Horton v. California*, *supra*, at p. 141; *People v. Bradford*, *supra*, at p. 1294.)

Contrary to appellant's assertions, Officer Smith was present when the items were seized. He testified that only 30 seconds to a minute elapsed before he followed Officer Turner as far as the bedroom door and looked in. Also, it is of no consequence if Barnes was already in custody when the credit cards were seized, since their seizure is justifiable as a plain view seizure as well as the fruit of a search incident to arrest. We apply the general rule holding """"[a] ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.' [Citation.]""" (*People v. Smithey* (1999) 20 Cal.4th 936, 971-972.)

Appellant's arguments are to no avail, and denial of the motion to suppress is upheld.

DISPOSITION

The judgment is affirmed.

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_____, P.J.
BOREN

We concur:

_____, J.
DOI TODD

_____, J.
ASHMANN-GERST